KROKIDAS & BLUESTEIN LLP

CLIENT ALERT

Massachusetts K-12 Public Schools Owe a Duty of Care to Students at Foreseeable Risk of Suicide

A recent federal court decision puts Massachusetts charter and non-charter public schools on notice of the duty of care owed to students who are the target of bullying and at risk of suicide. On July 1, 2024, the United States District Court for the District of Massachusetts recognized that Massachusetts law imposes a duty of reasonable care on a public school toward a student at that school who is at foreseeable risk of suicide. Specifically, in the matter of *Doe v. City of Northampton*, Judge Mark Mastroianni concluded in a Memorandum and Order on the Defendant's Motion to Dismiss (the "Order") that "under Massachusetts law, a public school owes a duty of reasonable care to a minor child when the school has actual knowledge of a previous suicide attempt, or when the student has stated plans or intentions to commit suicide of which the school has actual knowledge[,]" adding that "in these circumstances a second suicide attempt is foreseeable as the law has defined the term."[1]

In *Northampton*, sixteen-year-old N.M., a Northampton High School ("NHS") student, committed suicide in January 2020 after experiencing bullying, harassment, and physical attacks from her peers throughout the course of her freshman year and into her sophomore year at NHS. N.M. had attempted suicide in May 2019 and had expressed suicidal intent later that year, both of which the school was allegedly aware. N.M.'s mother filed a wrongful death suit against the City of Northampton ("Defendant") under the Massachusetts Tort Claims Act, alleging that NHS's negligence resulted in N.M.'s suicide.

Defendant objected to the wrongful death claim on the grounds that Defendant had sovereign immunity as a public employer. Pursuant to Massachusetts law, a public employer may not be sued if "[the] claim [is] based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortious conduct of a third person, which is not originally caused by the public employer or any other person acting on behalf of the public employer."[2] However, Massachusetts law further provides an exception to that sovereign immunity, and Judge Mastroianni found that exception applied in *Northampton,* holding that sovereign immunity does not extend to "any claim based upon explicit and specific assurances of safety or

[1] See *Doe v. City of Northampton*, No. CV 23-10358-MGM, 2024 WL 3257062 (D. Mass. July 1, 2024)
[2] Mass. Gen. Law. Ch. 258, § 10(j)

assistance, beyond general representations that investigation or assistance will be or has been undertaken, made to the direct victim or a member of his family or household by a public employee, provided that the injury resulted in part from reliance on those assurances."[3] Relying on the Magistrate Judge's earlier conclusion that a Safety and Supervision Plan NHS implemented for N.M. – intended to ensure N.M.'s physical and emotional safety at school – constituted an "explicit and specific assurance," Judge Mastroianni concluded, "When viewed in a light most favorable to Plaintiff, this suicide was the result, at least in part, of Defendant's ineffective implementation of the Safety and Supervision Plan's 'explicit and specific' assurance that N.M. would be protected from the physical and emotional harm caused by bullying, as well as from the foreseeable consequences of that bullying such as suicide."

In rejecting Defendant's argument that Massachusetts does not recognize a duty of care between a public school and a public school student at foreseeable risk of suicide, Judge Mastroianni relied on *Nguyen v. Mass. Inst. of Tech.*, 96 N.E.3d 128 (Mass. 2018), a recent higher education case. In *Nguyen*, the Massachusetts Supreme Judicial Court found a duty to exist between universities and their students at foreseeable risk of suicide when "a student has attempted suicide while enrolled at the university or recently before matriculation, or has stated plans or intentions to commit suicide[.]" In *Northampton*, Plaintiff alleged that N.M. attempted suicide in May 2019 while enrolled at NHS and that N.M. expressed suicidal intent in the fall of 2019, both of which Defendant was aware. Judge Mastroianni concluded that the duty of care owed by a school described in the *Nguyen* ruling extends to elementary and secondary public schools as well, noting that the considerations underlying the *Nguyen* ruling, such as the "immaturity" of students and their "need for protection," was "heightened by the greater level of immaturity and deeper degree of emotional vulnerability inherent in K-12 students." Judge Mastroianni further indicated that Massachusetts public policy favored the goals of combatting the harmful impacts of bullying and reducing adolescent suicide as additional support that Massachusetts law recognizes a duty of reasonable care between public schools and their students at foreseeable risk of suicide.

The Order, in combination with the *Nguyen* ruling, demonstrates that Massachusetts law increasingly recognizes a duty owed by K-12 public schools to their students who are at foreseeable risk of suicide. Schools are now on notice that a student's previous suicide attempt and prior experience of bullying are clear factors in the calculation of foreseeability in the context of suicide risk.

Massachusetts charter and non-charter public K-12 schools are reminded to:

- Ensure that all staff are well-trained on their school's bullying prevention and intervention plan and anti-discrimination/anti-harassment policies and grievance procedures.
- Regularly review and update all school polices and ensure they are readily available to students, staff, and families in translation and other accessible formats.
- Train staff on the school's obligation to ensure that students who need special education and related services are identified, located, and evaluated.

[3] Mass. Gen. Law. Ch. 258, § 10(j)(1)

- Implement procedures to ensure that student safety and support plans are (1) robust and appropriately detailed based upon a student's individual needs, and (2) implemented and overseen by competent, trained staff.

Summer is a good time to review school polices and grievance procedures and update back-to-school professional development materials. If you have any questions about the duty of care between charter and non-charter public schools and students; bullying, harassment, or other school matters; or require staff training in any of these areas, please contact Elka Sachs (esachs@kb-law.com), Bettina Toner (btoner@kb-law.com), or Eric Jordan (ejordan@kb-law.com).